

## HB 1042 -- DESIGN-BUILD CONTRACTS

SPONSOR: Korman

### QUALIFICATIONS-BASED SELECTION OF CONSTRUCTION MANAGERS (Sections 8.683 and 8.685, RSMo)

This bill allows a construction manager awarded a construction management services contract or any construction firm affiliated with the construction manager to bid on or perform the actual construction on a public works project if the construction manager submits a sealed bid in the same manner as any other bidder, gives proper notice to other interested bidders, and complies with all of the provisions of Section 67.5050 proposed in the bill.

The bill also allows a construction management services contract to be awarded by a public owner on a negotiated basis if the construction manager complies with all of the provisions of Section 67.5050 proposed in the bill. Currently, a construction management services contract must be let by competitive bidding if the construction manager or any construction firm affiliated with the construction manager guarantees or otherwise assumes financial responsibility for the work of others on the project, provides a guaranteed maximum price for the work of others, or furnishes or provides a performance or payment bond for the other contractors on the project.

### CONSTRUCTION MANAGER-AT-RISK CONTRACTS (Section 67.5050)

This bill allows political subdivisions to use the construction manager-at-risk method for construction projects. In its main provisions, the bill:

- (1) Requires that, before selecting a construction manager-at-risk, or during the selection process, the political subdivision must select an engineer or architect to prepare the construction documents, with full responsibility for complying with all applicable state laws;
- (2) Authorizes a political subdivision to use a one-step or two-step process to select the construction manager-at-risk. The necessary procedures for both processes are outlined in the bill. The political subdivision is authorized to determine how it will publish its notice of request for proposals or qualifications;
- (3) Requires the political subdivision to publicly open and read aloud the names of the construction managers, and to evaluate and rank each proposal within 45 days of the opening of the proposals. The construction manager-at-risk that offers the best value must be

selected. If the political subdivision fails to negotiate a satisfactory contract with the selected construction manager-at-risk, the political subdivision must negotiate with the next highest ranked construction manager-at-risk;

(4) Requires the construction manager-at-risk to publicly advertise and receive bids from trade contractors or subcontractors for the performance of all major elements of the work. The construction manager-at-risk can perform certain work if it provides the best value and is selected by the political subdivision. Both the political subdivision and the construction manager-at-risk must evaluate the bids, and the political subdivision may compensate the construction manager-at-risk if the political subdivision requires that a different bid be accepted than the one recommended by the construction manager; and

(5) Specifies the procedures for when a selected trade contractor or subcontractor defaults in the performance of its work.

#### DESIGN-BUILD CONTRACTS (Section 67.5060)

The bill also authorizes political subdivisions to enter into design-build contracts for construction projects exceeding \$25 million. In its main provisions, the bill:

(1) Provides definitions for certain terms used in the bill, including "design-build," "design-build contract," "design-build project," "design-builder," "design criteria consultant," "design criteria package," "design professional services," "proposal," "public facility construction project," "qualifications-based selection," "request for proposal," and "stipend";

(2) Requires that, in order to protect the health, safety, and general welfare of the public, a design professional must own at least a 50% interest in the legal entity that is or contracts with the design-builder, or at least 50% of the members of the board of directors of the legal entity that is or contracts with the design-builder must be design professionals;

(3) Requires political subdivisions planning a design-build project to employ or retain a design criteria consultant as defined in the bill, and an architect or engineer, as appropriate to the project type and duly licensed in this state, to assist with the design criteria package, preparation of the request for proposals, prequalification of design-builders, and evaluation of proposals;

(4) Requires political subdivisions to advertise the request for proposal in a certain manner and include certain information in the request for proposal;

(5) Creates a three-stage process for the solicitation of proposals: phase I will be the solicitation of qualifications of the design-build team; phase II will be the solicitation of a technical proposal including conceptual design for the project; and phase III will be the proposal of the construction cost. Details regarding the requirements for each phase are set out in the bill;

(6) Authorizes a political subdivision to pay a reasonable stipend, the amount of which must be established in the request for proposal, to each prequalified design-builder whose proposal is responsive but not accepted;

(7) Provides that the payment bond requirements that apply to public works contracts will also apply to design-build projects; and

(8) Requires any person or firm providing architectural, engineering, landscape architecture, or land-surveying services to be licensed. The design-builder is exempt from the requirements involving certificates of registration or authority if the architectural, engineering, or land-surveying services are performed by subcontractors who are properly licensed.

The authority to use design-build and design-build contracts expires on September 1, 2025.

#### SPECIALTY CONSTRUCTION DESIGN (Section 67.5070)

The bill authorizes a political subdivision to require that a contractor provide a specialty construction design, as defined in the bill, as a portion of a construction contract if the requirement is specified in the bid documents written by a design professional. When disbursing grants under the Community Development Block Grant program, the Department of Economic Development is prohibited from rejecting waste water or water treatment projects solely on their utilization of specialty construction or specialty construction design. The Department of Natural Resources is prohibited from denying funds from the Water and Wastewater Loan Fund to projects based on their use of specialty construction or specialty construction design contracts.